



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/024,480 | 12/21/2001 | Gilles Rubinstenn | 05725.0972-00000 | 4559 |

7590 06/18/2004

FINNEGAN, HENDERSON, FARABOW
GARRETT & DUNNER, L.L.P.
1300 I Street, N.W.
Washington, DC 20005-3315

EXAMINER

NGUYEN, KIMBINH

ART UNIT PAPER NUMBER

2671

DATE MAILED: 06/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/024,480

Applicant(s)

RUBINSTENN ET AL.

Examiner

Kimbhinh T. Nguyen

Art Unit

2671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-113 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-113 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to amendment filed 4/2/04.
2. Claims 1-113 are pending in the application.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-3, 12, 37-40, 43, 44, 53, 78-81, 86 and 92-95 are rejected under 35 U.S.C. 102(e) as being anticipated by Craine et al. (6,427,022).

Claim 1, Craine et al. discloses prompting a subject to capture initial body image (baseline image) of the subject (a setup which allows suitable photographs to be taken of the skin of subject 1; col. 3, lines 19-33); prompting the subject to self evaluate (accurate evaluation or skin self-examination in mirrors or side-by-side comparison of photographic images) an actual condition of the subject's own body (col. 7, lines 25-45); enabling the subject to respond to the prompt (blinking mode); and enabling the initial body image (the base line image) to be altered based on the subject's response to the prompt, to reflect in the altered image the self-evaluation of the subject (col. 7, lines 25-45).

Claims 2, 43, 86, Craine et al. discloses the image capture device comprises at least one of a digital camera, a scanner, a web cam, a camcorder, and a film camera (camera 3; CCD camera 9; col. 4, lines 1-27).

Claims 3, 44, Craine et al. discloses prompting the subject includes instructing the subject to use the image capture device the device is placed at a predetermined distance (predetermined distance 4) and a predetermined angle relative to the positioning device (the orientation, focus and distance of the camera from the actual area; col. 2, lines 35-38; col. 3, lines 30-33; fig. 5).

Claims 12, 53, Craine et al. discloses the initial body image to be displayed on a display device, control elements to be displayed on the display device, and enabling activation of the control element to alter portion of the image displayed on the display device (col. 9, lines 29-33).

Claims 37-40, 78-81, 92-95, Craine et al. the initial body image having fuzzy distortion; the displayed image is altered, based on the subject's response to the prompt, to remove the fuzzy distortion (col. 8; lines 3-8).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2671

5. Claims 5-7, 11, 13-18, 21-26, 28-31, 33-36, 41, 42, 46-48, 52, 54-59, 62-67, 69-72, 74-77, 83-85, 87-91, 96, 97, 99, 100, 102-104, 107, 109-111 are rejected under 35 U.S.C. 103(a) as being unpatentable over Craine et al. (6,427,022) in view of Hillebrand et al. (6,571,003).

Claims 5, 46, Craine et al. does not teach prompt is presented graphically in multiple choice; however, Hillebrand et al. discloses the at least one prompt is presented graphically in multiple choice form (a graphical comparison; col. 11, lines 4-44; fig. 9). **Claims 6, 47**, Hillebrand et al. discloses prompting the subject (by the controller 200) to self-evaluate at least one of skin pigmentation, skin texture, skin sheen, skin tone, skin mattiness, skin lines, skin wrinkles, distribution of wrinkles, intensity of wrinkles, intensity of pores, depth of pores, color tone, color homogeneity, spots, freckles, shininess, oiliness, roughness, distribution of hair, thickness of hair, length of hair, density of hair, on the subject's own body (col. 7, line 65 through col. 8, line 10). **Claims 7, 48**, Hillebrand et al. discloses the body image includes a facial image (the first digital image of the face of the person; col. 1, lines 53-55), and wherein the prompt prompts the subject to self-evaluate characteristics of the subject's own face (col. 1, lines 58-61). **Claims 11, 52**, Hillebrand et al. discloses the initial body image is a facial image (col. 1, lines 53-55), wherein the actual condition comprises at least one of skin pigmentation, skin texture, skin sheen, skin tone, skin mattiness, skin wrinkles, and skin lines, wherein the actual condition is located in regions of at least one of the eyes, forehead, cheeks, lips, brow, and nose, and wherein the image is altered to reflect the subject's self-evaluation of

Art Unit: 2671

the actual condition (col. 7, line 65 through col. 8, line 10). **Claims 13, 54,** Hillebrand et al. discloses the actual condition is wrinkles "under eye " sub-image; fig. 7) and wherein movement of the control element in a first direction causes an increase in the appearance of wrinkles on portion of the image displayed on the display device and movement of the control element in a second direction causes a decrease in the appearance of wrinkles (under eye sub-image) on portion of the image displayed on the display device (col. 7, lines 28-40). **Claims 14, 15, 55, 56, 91,** Hillebrand et al. discloses the control element comprises first and second control elements (using the controller 200, moving the slider control 528 to the right and moving the slider control 528 to the left; col. 7, lines 30-37) and the actual condition is wrinkles (suppose "under eye" sub-image is wrinkles), wherein activation of the first control element causes an increase in the appearance of wrinkles on portion of the image displayed on the display device and activation of the second control element causes a decrease in the appearance of wrinkles on portion of the image displayed on the display device; selectable condition representations to be displayed on the display device, and enabling the subject to select at least one of the condition representations (display analysis results; col. 10, lines 41-51). **Claims 16-18, 57-59,** Hillebrand et al. discloses prompt is associated with the plurality of selectable condition representations and wherein the subject's response to the prompt comprises selection of at least one of the representations; enabling the initial body image to be altered comprises enabling the initial body image to be altered to include at least one condition representation selected by the subject;

Art Unit: 2671

the plurality of selectable condition representations are caused to be displayed in at least one of a one-by-one fashion and a simultaneous fashion (figs. 10-14).

Claims 21, 62, Hillebrand et al. discloses displaying portion of the initial body image (the first image, and wherein the at least one prompt further prompts the subject to compare a portion of the body image displayed on the display device to the subject's own body (col. 2, lines 3-13). **Claims 22, 63**, Hillebrand et al.

discloses the subject to respond to the prompt comprises enabling the subject to indicate whether a portion of the body image displayed on the display device accurately represents the actual condition of the subject's own body, and wherein the image to be altered when the subject believes a portion of the body image displayed on the display device does not accurately represent (each defect area is typically much smaller than the initial image) the actual condition (col. 1, lines 53-67). **Claims 23, 64**, Hillebrand et al. discloses the initial body image is an

image of at least a portion of the subject's face (col. 1, lines 53-54). **Claims**

24, 65, Hillebrand et al. discloses the subject to store the altered image (col. 2, lines 28-30). **Claims 25, 26, 66, 67**, Hillebrand et al. discloses the subject to

receive information about at least one beauty product for treating the actual condition; a recommendation to use the at least one beauty product (col. 1, lines 47-50). **Claims 28-31, 33, 69-72, 74**, Hillebrand et al. discloses enabling the

subject to purchase (to use) beauty product (cosmetic product); the subject to simulate use of beauty product on the altered image; the subject to select the at least one beauty product; product for treating the actual condition (col. 11, lines 50-64). It would have been obvious to one of ordinary skill in the art at the time

Art Unit: 2671

the invention was made to incorporate the skin imaging and analysis systems taught by Hillebrand into image comparator of Craine's system for producing current digital image data of the portion of the subject's skin, because it would quick identification of visual skin defects thereby allowing an operator to recommend cosmetic products or medical treatments and simulate an improvement and/or worsening to the areas (col. 1, lines 46-50).

Claims 34-36, 75-77, the rationale provided in the rejection of claims 1, 7, 11, 12 is incorporated herein.

Claims 41, 42, 96, the rationale provided in the rejection of claims 1 and 7 is incorporated herein.

Claims 83 and 84 are rejected upon the same reasons set forth in claim 1, 12, 21, 22, because a method of constructing an image of an external body condition is considered as a method of constructing a body image. In addition, Hillebrand teaches skin evaluation of color (skin color; col. 1, lines 65-66), texture and comparing results (fig. 5).

Claim 85, the rationale provided in the rejection of claims 1, 11, 12 is incorporated herein.

Claims 87-89, Craine et al. does not teach identifying bias element; however, Hillebrand et al. teaches identifying bias element (skin wrinkles, skin smoothness; col. 8, lines 5-8). **Claim 90**, Hillebrand et al. teaches display analysis results (col. 10, line 41 through col. 11, line 44). **Claim 97**, Hillebrand et al. teaches the initial image is present in 2D form (fig. 5). **Claim 99**, Hillebrand et al. teaches transmitting and receiving information via network

Art Unit: 2671

(col. 4, lines 23-35). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate identifying bias element taught by Hillebrand into image comparator of Craine's system for producing current digital image data of the portion of the portion's skin, because it would provide a quick identification of visual skin defects thereby allowing an operator to recommend cosmetic products or medical treatments and simulate an improvement and/or worsening to the areas (col. 1, lines 46-50).

Claims 100, 107, Craine et al. discloses capturing an image of a body region of the subject (col. 3, lines 26-33); displaying the captured image (col. 9, lines 22-25); Craine does not teach comparing a color of the displayed image; however, Hillebrand teaches the subject to compare a color of the displayed image with an actual color of the subject; calibrating the color of the image when the subject perceives a difference between the displayed image and the actual skin color (col. 8, lines 33-67); and simulates use of at least one beauty product on the color calibrated image (col. 11, lines 47-64). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the calibrating of the color of the image taught by Hillebrand into image comparator of Craine's system for producing current digital image data of the portion of the portion's skin, because it would create improved areas by electronically altering the color of pixels in one of the defect areas located in the first digital image of the face of the person (col. 2, lines 27-30). Further, **Claims 102, 109**, Hillebrand et al. teaches the image capture device is chosen from a digital camera and a scanner (col. 3, lines 46-49). **Claims 103, 110**, Hillebrand et al. discloses

Art Unit: 2671

places the body region adjacent to the display device and to visually perceive whether the color of the displayed image and the actual color of the body region differ (color visually distinct from the skin color; col. 8, lines 33-41). **Claims 104, 111**, Hillebrand et al. displaying a plurality of colors (blue, red, green, brown), enabling the subject to select one of the displayed colors closest to the actual color of the subject's body region, and enabling alteration of the displayed image to include the selected color (col. 8, line 33 through col. 9, line 4).

6. Claims 4, 45, 82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Craine et al. (6,427,022) in view of Hillebrand et al. (6,571,003), and further in view of Goldberg et al. (6,526,158).

Claims 4, 45, 82, Craine et al. does not teach the prompt comprises at least one question; however, Goldberg et al. discloses the prompt comprises at least one question (col. 7, lines 11-22). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the query of the prompt as taught by Goldberg into the skin image system of Craine for prompting the subject, because it would identify the subject whose image to be captured (col. 5, lines 63-65).

7. Claims 8, 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Craine et al. (6,427,022) in view of Hillebrand et al. (6,571,003), and further in view of Akiba et al. (6,377,745).

Claims 8, 49, Craine does not teach a time-lapse projection of the altered image; however, Akiba et al. discloses enabling a subject to view a time-lapse projection of the altered image (abstract). It would have been obvious to one of

Art Unit: 2671

ordinary skill in the art at the time the invention was made to incorporate the altered image with a lapse-time as taught by Akiba's system into the skin image system of Craine for prompting the subject, because it would provide image of video data can be indexed efficiently (abstract).

8. Claims 9, 10, 27, 50, 51, 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Craine et al. (6,427,022) in view of Hillebrand et al. (6,571,003), Akiba et al. (6,377,745) and further in view of Donovan et al. (US Pub. No. 2003/0014324 A1, filed 7/10/01).

Claims 9, 10, 27, 50, 51, 68, Craine et al. does not disclose a time lapse; however, Donovan et al. teaches the subject to view a time lapse projection of the altered image based on an assumption of the subject using the at least one beauty product to treat the actual condition (paragraph 0113, page 13). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the time lapse as taught by Donovan's system into the skin image system of Craine for prompting the subject, because it would provide synthesizing and distributing beauty and personal care products in a retail environment (paragraph 007, page 1).

9. Claims 19, 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Craine et al. (6,427,023) in view of Hillebrand et al. (6,571,003), Akiba et al. (6,377,745) and further in view of Filo et al. (6,215,498).

Claims 19, 60, Craine et al. does not teach displaying the select presentation by slide show and movie presentation; however, Filo et al. discloses selectable condition representations are displayed by means of one of a slide

Art Unit: 2671

show presentation and a movie presentation (col. 20, lines 51-54). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the slide show and movie presentation as taught by Filo's system into the skin image system of Craine for prompting the subject, because it would display data and information of interest (col. 20, lines 52-53).

10. Claims 20, 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Craine et al. (6,427,022) in view of Hillebrand et al. (6,571,003) and further in view of Wu et al. "Skin Aging Estimation by Facial Simulation", IEEE 1999.

Claims 20, 61, Craine et al. does not teach varying appearances of wrinkles; however, Wu et al. discloses the actual condition comprises wrinkles which are representation of varying appearances of wrinkles (section 1. Introduction, page 210). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the appearance of wrinkles on the face as taught by Wu's method into the skin image system of Craine for prompting the subject, because it would develop a dynamical wrinkle simulation system (see section 1.1, page 210).

11. Claims 32, 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Craine et al. (6,427,022) in view of Hillebrand et al. (6,571,003), and further in view of Dirksing et al. (6,516,245).

Claims 32, 73, Craine et al. does not teach makeup product; however, Dirksing et al. teaches beauty product (cosmetic product) comprises at least one makeup product (lipstick, eyeliner, lotion, powder, mascara; col. 4, lines 39-43). It would have been obvious to one of ordinary skill in the art at the time the

Art Unit: 2671

invention was made to incorporate makeup product taught by Dirksing's method into the skin image system of Craine for prompting the subject, because it would provide the consumer with more privacy and comfort during overall process (col. 4, lines 14-17).

12. Claims 98, 101, 105, 106, 108, 112 and 113 are rejected under 35 U.S.C. 103(a) as being unpatentable over Craine et al. (6,427,022) in view of Hillebrand et al. (6,571,003), and further in view of Hima et al. (EP 1134701 A2).

Claim 98, Craine et al. does not teach the initial image is present in 3D form; however, Hima et al. teaches displaying a user's face in a 3D fashion (col. 1, lines 32-34); a 3D face model data (col. 3, line 42). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate a 3D face model image taught by Hima's method into the skin image system of Craine for prompting the subject, because it would provide a more realistic beauty simulation (col. 1, lines 33-34).

Claims 101, 105, 108, 112, Craine et al. does not teach simulating use of the at least one beauty product on predetermined portions of the image. However, Hima et al. teaches this feature (col. 7, line 58 through col. 8, line 12); selecting the beauty product from a plurality of beauty products and causing a simulation of use of the selected beauty product to appear on a region of the color calibrated image (col. 8, line 46 through col. 9, line 28). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate simulating use beauty product on predetermined portion of image taught by Hima's method into the skin image system of Craine for prompting the

Art Unit: 2671

subject, because it would provide a more realistic beauty simulation (col. 1, lines 33-34).

Claims 106, 113, Hillebrand et al teaches calibrating the displayed image to simulate at least one of an actual skin tone (col. 10, lines 16-40); Hillebrand does not teach an actual hair color. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a hair color into calibrating the displayed image to simulate an actual hair color, because human hair is a part of an external human body which includes many desired color that is also a part of beauty product.

Response to Arguments

13. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

The rejections of claims 1-113 have been modified in this Office Action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Kimbinh Nguyen** whose telephone number is **(703) 305-9683**. The examiner can normally be reached **(Monday-Thursday from 7:00 AM to 4:30 PM and alternate Fridays from 7:00 AM to 3:30 PM)**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Zimmerman, can be reached at (703) 305-9798.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Art Unit: 2671

Washington, D.C. 20231

Or faxed to:

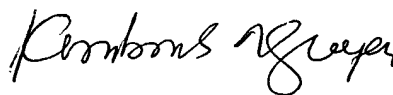
(703) 872-9314 (for Technology Center 2600 only)

Hand-delivered responses should be brought to Crystal Part II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

June 4, 2004



Kimbinh Nguyen

Patent Examiner AU 2671